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Legal Ethics and the Poverty Program

*Kenneth D. Korosec**

THE LEGAL SERVICES PROGRAM of the Office of Economic Opportunity will present many of the ethical issues posed by past attacks on group legal services.[1] A focal point of the attacks was the *Brotherhood of Railroad Trainmen* case, where the union would suggest an attorney who, in its judgment, was capable of handling an individual member's injury claim against the railroad.[2] Apparent violations of the Canons of Professional Ethics of the American Bar Association were alleged against the union, particularly those canons dealing with solicitation,[3] stirring up litigation,[4] presence of lay intermediaries,[5] and aid by a lawyer

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1 *See, e.g.*, Atchison, Topeka and the Santa Fe Ry. Co. v. Jackson, 235 F. 2d 390 (10th Cir., 1956); Hildebrand v. State Bar of California, 36 Cal. 2d 504, 225 P. 2d 508 (1950); Ryan v. Pennsylvania Railroad, 268 Ill. App. 364 (1932); In re Brotherhood of Railroad Trainmen, 13 Ill. 2d 391, 150 N. E. 2d 163 (1958).

2 A discussion of the Brotherhood plan for aid of its members is presented in In re Brotherhood of Railroad Trainmen, *supra* note 1.

3 Canon 27 of the Canons of Professional Ethics (1964): "It is unprofessional to solicit professional employment by circulars, advertisements, through touters, or by personal communications or interviews not warranted by personal relations. Indirect advertisements for professional employment, such as furnishing or inspiring newspaper comments, or procuring his photograph to be published in connection with causes in which the lawyer has been or is engaged or concerning the manner of their conduct, the magnitude of the interest involved, the importance of the lawyer's position, and all other like self-laudation, offend the traditions and lower the tone of our profession and are reprehensible; but customary use of simple professional cards is not improper.

"Publication in reputable law lists in a manner consistent with the standards of conduct imposed by these canons of brief biographical and informative data is permissible. Such data must not be misleading and may include only a statement of the lawyer's name and the names of his professional associates; addresses, telephone numbers, cable addresses; branches of the profession practiced; date and place birth and admission to the Bar; schools attended, with dates of graduation, degrees and other educational distinctions; public or quasi-public offices; posts of honor; legal authorships; legal teaching positions; memberships and offices in bar associations and committees thereof, in legal and scientific societies and legal fraternities; the fact of listings in other reputable law lists; the names and addresses of references; and, with their written consent, the names of clients regularly represented. A certificate of compliance with the Rules and Standards issued by the Special Committee on Law Lists may be treated as evidence that such list is reputable."

4 Canon 28 of the Canons of Professional Ethics (1964): "It is unprofessional for a lawyer to volunteer advice to bring a lawsuit, except in rare

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in the unauthorized practice of law.[6] In most of the early cases, the union practices were defeated; however, changes in society were soon to produce a different result.

The National Association for the Advancement of Colored People had provided counsel for all persons fighting for their civil rights who would sign their authorization form. Virginia attacked this as solicitation and the unauthorized practice of law; and the ensuing law suit reached the Supreme Court.[7] The Court, recognizing that the N.A.A.C.P. was fighting for civil rights in an area where this course of action was exceedingly unpopular, stated:

> A state cannot foreclose the exercise of constitutional rights by mere labels . . . The First amendment also protects vigorous advocacy . . . The NAACP is not a conventional political party; but the litigation it assists . . . serv[es] to vindicate the legal rights of members of the American Negro

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cases where ties of blood, relationship or trust make it his duty to do so. Stirring up strife and litigation is not only unprofessional, but it is indictable at common law. It is disreputable to hunt up defects in titles or other causes of action and inform thereof in order to be employed to bring suit or collect judgment, or to breed litigation by seeking out those with claims for personal injuries or those having any other grounds of action in order to secure them as clients, or to employ agents or runners for like purposes, or to pay or reward, directly or indirectly, those who bring or influence the bringing of such cases to his office, remunerate policemen, court or prison officials, physicians, hospital attaches or others who may succeed, under the guise of giving disinterested friendly advice, in influencing the criminal, the sick and the injured, the ignorant or others, to seek his professional services. A duty to the public and to the profession devolves upon every member of the Bar, having knowledge of such practices on the part of any practitioner, immediately to inform thereof to the end that the offender be disbarred."

[5] Canon 35 of the Canons of Professional Ethics (1964): "The professional services of a lawyer should not be controlled or exploited by any lay agency, personal or corporate, which intervenes between client and lawyer. A lawyer's responsibilities and qualifications are individual. He should avoid all relations which direct the performance of his duties by or in the interest of such intermediary. A lawyer's relation to his client should be personal, and the responsibility should be direct to the client. Charitable societies rendering aid to the indigent are not deemed such intermediaries.

"A lawyer may accept employment from any organization, such as an association, club or trade organization, to render legal services in any matter in which the organization, as an entity, is interested, but this employment should not include the rendering of legal services to the members of such an organization in respect to their individual affairs."

[6] Canon 47 of the Canons of Professional Ethics (1964): "No lawyer shall permit his professional services, or his name, to be used in aid of, or to make possible the unauthorized practice of law by any lay agency, personal or corporate."

[7] N. A. A. C. P. v. Button, 371 U. S. 415, 83 S. Ct. 328 (1963).

> community . . . For such a group, association for litigation may be the most effective form of political association.[8]

Obviously the Court was primarily interested in the preservation of civil rights, for its opinion reads in terms of constitutional rights as opposed to state action, in the absence of a compelling state interest.[9] There was no intent for pecuniary gain, nor any danger of conflicting interests, for which the Canons were set up; therefore the plan was protected by the first amendment.[10] Actually, this type of social action will, in the long run, be beneficial to society;[11] it is a fundamental act of freedom and free association within the scope of the first amendment.[12]

The first *Brotherhood* case to reach the Supreme Court was against the Virginia Bar.[13] The Court again rested its decision on the right of freedom of speech and the coexistent right to freedom of association.[14] In fact, the Court specifically negated any threat to legal ethics, toward "commercialization of the legal profession," or toward the unauthorized practice of law, stating that the *Brotherhood* plan was "not 'ambulance chasing.' "[15]

These two cases stirred up much controversy over group legal services plans and over the entire ethical question presented where nonlawyers either directly or indirectly refer "prospects" to attorneys. In the *N.A.A.C.P.* case,[16] a prime consideration was the "form of political expression," where no element of private gain was present. However, in the *Brotherhood*

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[8] *Id.* at 429-431.

[9] *Id.* at 438: "Only a compelling state interest in the regulation of a subject within the State's constitutional power to regulate can justify limiting First Amendment freedoms."

[10] Birkby and Murphy, Interest Group Conflict in the Judicial Arena: The First Amendment and Group Access to the Courts, 42 Texas L. Rev. 1018 (1964). See also Brinkley, Note, 25 La. L. Rev. 558, 564-5 (1965), for a discussion of the merits of control over solicitation by the states to preserve the attorney-client relation.

[11] Cochran, Note, 34 Miss. L. J. 344 (1963).

[12] Hollenkamp, Note, 32 U. Cinc. L. Rev. 550 (1963).

[13] Brotherhood of Railroad Trainmen v. Virginia *ex rel.* Virginia State Bar, 377 U. S. 1, 84 S. Ct. 1113 (1964).

[14] *Id.* at 6: "The right of the workers personally or through a special department of their Brotherhood to advise concerning the need for legal assistance—and, most importantly, what lawyer a member could confidently rely on—is an inseparable part of this constitutionally guaranteed right to assist and advise each other."

[15] *Ibid.*

[16] *Supra,* note 7.

case,[17] monetary consideration was given to the attorney. The Court still, however, rested its decision on *N.A.A.C.P.*, some feel wrongly.[18] There has been a gradual change, though, in the court treatment of solicitation by third parties. The courts established the principle that "once a constitutional right to petition the courts existed, the fact that a lay intermediary was assisting the prosecution would not invalidate the suit without other good cause." [19] Thus, without bad faith or some other violation, an action properly brought may not be dismissed *solely* because an intermediary furthered the cause. These decisions also point up the increasing realization by the courts of the necessity for having attorneys in all stages of legal proceedings. Nonlegal organizations may have roots which may actually aid in the administration of justice by informing persons who otherwise would not seek redress because of lack of knowledge or fear.[20] The pecuniary motive in a personal injury claim, or an advantage to the intermediary in recommending an attorney, however, gives rise to an ever-present danger of profit-seeking by the particular group. As long as none of this exists, the courts should "balance the equities" between the possible misuse of the trust and confidence placed in the organization,[21] and the need for an attorney to serve justice best.[22] It is interesting to note that, during the progress of the two cases, the *Unauthorized Practice News*, the periodical of the Unauthorized Practice Committee of the American Bar Association, followed consistently every nuance of the *Brotherhood* case while only passing reference was made to the *N.A.A.C.P.* case.[23] The committee also did not show any apprehension over the outcome of *N.A.A.C.P.*, while a storm of protest

[17] *Supra*, note 13.

[18] See Keller, Note, 26 Mont. L. Rev. 117 (1964). Also see Birkby and Murphy, *supra*, note 10.

[19] Baur, Note, 26 U. Pitt. L. Rev. 142 (1964).

[20] See Note, Group Legal Services and the Right of Association, 63 Mich. L. Rev. 1089 (1965).

[21] Note, 59 Nw. U. L. Rev. 821 (1965).

[22] Wisner, Note, 16 Syracuse L. Rev. 141 (1964).

[23] Reference to the N. A. A. C. P. case was made in 29 Unauthorized Practice News 97 (Spring, 1963) (Hereafter referred to as Un. Prac. News). Reference to the Brotherhood case was made in 28 Un. Prac. News 105 (Spring, 1962); 28 Un. Prac. News 178 (Summer, 1962); 28 Un. Prac. News 419 (Winter 1962-63); 29 Un. Prac. News 317 (Fall, 1963); 29 Un. Prac. News 401 (Winter, 1963-64); 30 Un. Prac. News 23 (Spring, 1964); 30 Un. Prac. News 114 (Summer, 1964); 30 Un. Prac. News 177 (Fall, 1964); 30 Un. Prac. News 365 (Winter, 1964-65); in short, in nearly every issue during the progress of the case.

greeted the court over the decision in *Brotherhood,* calling it "hurtful to the legal profession and to the public," [24] "just too bad the dissenting opinion is not the majority opinion," [25] and that it "is not a 'license to solicit'," [26] thus setting up its opposition to any extension of the presently existing means to aid individuals seeking redress in the courts.

The allied question of providing legal services to those in need of the services, but who could not afford to pay for them, or who were not aware of means to obtain them arose. The way was opened for the courts to examine the practice of law in the context of social interests outside of traditional professional standards. The functions which can be performed by a lay individual or group to assist persons needing legal services include providing an awareness of their rights to them, a bringing together of those persons and a particular lawyer, and perhaps a way of spreading the cost of the legal services over as many persons as possible. These aids may be provided to indigents or to those who are merely unaware of the avenues of help.[27] As a matter of fact:

> It can be forcibly argued that no society which proudly boasts the maxim "Equal Justice Under Law," can afford to tolerate the exploitation of a substantial segment of that public—indeed, any member—because they are unaware of their legal rights.[28]

Thus, the courts may examine many formulae which help increase this awareness so as to serve the best interests of society. Previously, the Bar's preoccupation with the problems of solicitation from their own self-interest served only to obscure the needs of many individuals for adequate legal representation. There must be an equality of access to advice by all those individuals needing assistance.[29]

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[24] 30 Un. Prac. News 114 (Summer, 1964).

[25] 30 Un. Prac. News 177, 189 (Fall, 1964).

[26] 30 Un. Prac. News 365 (Winter, 1964-65).

[27] Schwartz, Foreword: Group Legal Services in Perspective, 12 U. C. L. A. L. Rev. 279 (1965). The entire issue of the law review is a symposium dealing with both group legal services and problems involving legal representation of the poor. See also Markus, Group Representation by Attorneys as Misconduct, 14 Clev.-Mar. L. Rev. 1 (1965).

[28] See Schwartz, *supra* note 27 at 287.

[29] Bodle, Group Legal Service, the Case for BRT, 12 U. C. L. A. L. Rev. 306 (1965). Mr. Bodle also states that in the field of group legal services

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Continuing discussions regarding group legal services in itself, and also the attendant problem of providing services to persons of moderate or low means were taking place.[30] In the midst of this, the Office of Economic Opportunity created the Neighborhood Legal Services Project under authority of the Economic Opportunity Act of 1964, providing assistance to "community action programs" which assist in the elimination of poverty.[31] The Act provides for granting federal funds to local programs to attack and remedy causes of poverty. One of the critical aspects of the "war" is effective legal representation of the poor. The essential question involved for the program is whether the particular organization seeking funds, however established, can provide the best possible legal services for the poor.[32] The actual Neighborhood Office is set up by a group, as outlined above, which proposes a plan to the Office of Economic Opportunity and asks for necessary funds. This Neighborhood Office then "advertises" its existence through the social worker in the field, through newspaper and other communications media coverage of its existence, and through employers. It then proc-

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(and, presumably, legal services to the poor as an analogous situation), the Canons of Ethics of the American Bar Association relating to solicitation (Canon 27), the presence of lay intermediaries (Canon 35), and the unauthorized practice of law (Canon 47), be revised to reflect the current needs of all citizens to obtain effective legal representation.

[30] See 89 A. B. A. Rep. 499 (1964) regarding "re-examination of the profession's traditional ethical restrictions." See 30 Un. Prac. News 265 (Fall, 1964), regarding the California Bar Reports of 1964 which called for a liberalization of the present ethical considerations of attorneys, stating that, in its view (the Unauthorized Practice Committee of the American Bar Association) "it is not in the best interests of the Legal Profession, in its service to the public, to suggest a reorganization of the Profession."

[31] Economic Opportunity Act, 1964 (Chapter 34). P. L. 88-452, 78 Stat. 516, *et seq.* 42 U. S. C. A. § 2701 *et seq.* Under Sec. 2941, the Office of Economic Opportunity is created. The Director, by Sec. 2942(n) is authorized to "establish such policies, standards, criteria, and procedures . . . as he may deem necessary to carry out the provisions (of the Act)." Under Sec. 2782(a), "the term 'community action program' means a program (1) which mobilizes and utilizes resources, public or private . . . ; (2) which provides services, assistance, and other activities of sufficient scope and size to give promise toward elimination of poverty or a cause or causes of poverty through developing employment opportunities, improving human performance, motivation, and productivity, or bettering the conditions under which people live, learn, and work; (3) which is . . . administered with the maximum feasible participation of residents of the areas and members of the groups served; and (4) which is . . . coordinated by a public or private nonprofit agency."

[32] Tentative Guidelines for Legal Service Proposals to the Office of Economic Opportunity (1964), p. 1.

esses the particular cases received, rejecting those who have an ability to pay and referring some other cases to the Legal Aid Society or other legal resources of the community.[33]

This project, as conceived, contemplates the active participation by nonlegal personnel in searching for those needing legal help, channeling them to the local office, and explaining the plan to the poor.[34] This poses obvious ethical considerations regarding solicitation, presence of lay intermediaries, and aid of the unauthorized practice of law,[35] even more serious than, although similar to, those posed by group legal services.

Solicitation generally has been condemned as tending to commercialize the profession and to stir up litigation, which causes it to be regarded as a business rather than as a profession. Also advanced are arguments that solicitation shows the particular attorney has little regard for standards of honor which prevail, that an incentive is present to charge the client more, and that the emphasis is placed on profit rather than service.[36] Historically, the organized Bar has taken a strict attitude toward solicitation by any means.[37] Thus, active advertising or "running" is condemned, as is intervention of lay intermediaries. The latter is disapproved since no potential sanction of disbarment protects the public against fraud of the intermediary, the confidential attorney-client relation is disrupted, control might be exercised of the litigation by the intermediary, and a conflict of interest might exist.[38] A lawyer's relation to his client should be personal and his responsibility direct, not subject to exploitation by any intervening lay intermediary.[39] A lawyer cannot properly enter into any relations with a nonlawyer to have done for him

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[33] For a complete report on the first six months of operation of a particular neighborhood project, see Dugas and Johnson, First Semi-Annual Report of the Neighborhood Legal Services Project, United Planning Organization, Washington, D. C. (1965).

[34] 10 A. B. A. News 1 (1965).

[35] *Supra,* notes 3, 4, 5, and 6.

[36] Wilbur, Advertising, Solicitation, and Legal Ethics, 7 Vand. L. Rev. 677 (1954).

[37] See Drinker, Legal Ethics (1953), at 257, where the American Bar Association Committee held that members of a Bar Association could not advertise a group willing to perform legal services at an equitable charge in accordance with ability to pay for members of low-income groups. However, "institutional advertising" by a bar association in order to instruct the public has been approved.

[38] Cohen, Note, U. Ill. L. F. 97 (Spring, 1963).

[39] Drinker, *supra* note 37, at 165.

that which he cannot properly do for himself (solicitation), which is contrary to the dignity and self-respect of the profession. This renders the lawyer guilty of misconduct.[40] The question of the "unauthorized" practice of law is usually determined by statutes and court decisions in the various jurisdictions and not by the ethics committees of the bar associations. There is often an overlap with the canon dealing with lay intermediaries, since one is likely to be engaged in the unauthorized practice of law while engaging in the forbidden activities as an intermediary.[41] Note that the canon disapproving of lay intermediaries states that charitable societies rendering aid to the indigent—such as Legal Aid—are specifically exempted.[42]

The traditional concepts forbidding solicitation, presence of lay intermediaries, and the aid of the unauthorized practice of law really do not specifically fit the Neighborhood Legal Services Project of the Office of Economic Opportunity. As outlined above, the traditional reasons for condemning these practices bear no relation to what is being practiced by the Office to aid the poor and fight the "war on poverty." Solicitation has been deemed to be permissible where it is not in consideration of any remuneration, or not based on the motive of stirring up litigation, but to see that justice is secured for the one solicited. Such solicitation is actually beneficial to the client. If there is no flat fee basis resulting in a financial benefit to the solicitor from the bringing of fraudulent claims, but a desire to help in the procuring of legal aid for one in need of it, then the solicitation will be approved.[43] Additionally, the essence of the charge of fomenting litigation is a malicious intent, and to enforce rights given to all citizens cannot be deemed malicious.[44] This is precisely what the project intends to accomplish.

Another argument based on the canons is that the Legal Services Project tends to threaten the independence of the Bar.

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[40] American Bar Association Committee Opinion 8 (1925).

[41] Drinker, *supra* note 37, at 67. Thus, it has been held that a lawyer may not accept fees from a corporation to advise or represent its stockholders as an unauthorized practice of law, and an unlawful aid to the lawyer on the part of the corporation. Likewise, a lawyer may not permit a lay forwarder to fix fees or to arrange conferences and contacts with clients, also constituting an unauthorized practice of law.

[42] Canon 35, *supra* note 5.

[43] Seall, Note, 40 Notre Dame Law. 477 (1965).

[44] Rossi, Note, 40 U. Det. L. J. 531 (1963).

However, proponents of the Neighborhood Law Office point out that the plan itself envisions a governing body that is independent of other programs so that the lawyers may be free to attack any injustice, including other Office of Economic Opportunity programs, if necessary. The program is designed to provide the attorney with research tools and funds for investigative work so that he may represent the poor more effectively and maintain his independence.[45]

As a matter of fact, the Legal Services Project resembles more closely the Legal Aid Society, except in the providing of funds, than the *Brotherhood* group legal services plan. Both the Project and Legal Aid will advertise its service, advise clients to litigate if it is to their advantage, open its doors to a poor man referred to them by a social worker, reshape the law in an area of concern to the poor, aid groups of the poor toward solution of a common problem, devote themselves solely to a client's interest, and uphold the integral lawyer-client relation. The American Bar Association has held that Legal Aid Societies are perfectly in keeping with the traditional ethical concepts under the Canons. So too, its proponents claim, should be the Legal Services Project.[46] It is to be hoped that adequate legal services may be provided utilizing the neighborhood law office concept as well as other new devices without, after scrutiny by the Bar, conflict with legitimate professional standards. Programs relating to commercial consumer credit and to slum tenancies which are designed to educate the poor may eventually generate "business," but this is not the evil for which the canons were designed, especially since it is noted that Canon 35 specifically exempts "charitable societies."[47] Thus, such preconceived notions should be eliminated. As the American Bar Association President stated, "so long as this program stays within the broad framework of legal aid concepts (in the most general sense), there should be few serious problems."[48]

Teaching social workers to recognize legal problems and to advise the poor to seek legal assistance, according to those in favor of the plan, does not constitute a "stirring up of litigation," the "presence of lay intermediaries," or the "unauthorized prac-

[45] Westwood, Letter from the National Legal Aid and Defender Association (August 25, 1965).

[46] *Ibid.*

[47] Frankel, Experiments on Serving the Indigent, 51 A. B. A. J. 460 (1965).

[48] Powell, 10 A. B. A. News, Issue 7 (July 15, 1965), at 4.

tice of law." The social workers and family counselors should know the time when an attorney is needed, "just as a nurse knows when to call a doctor."[49] The ethical standards have served our society but should not be construed to prevent legal services from being offered to individuals who need them. An aggressive program of educating everyone who comes into contact with the poor is needed, rather than having the legal profession wait for the poor to come to them.[50]

There is no destruction of the attorney-client relation by the project, say those approving of it. The very basis of the Neighborhood Legal Services Project is that the same confidential, direct relation that is given to the rich man should be given to the poor man, since it is needed by him as much as, or even more than, the rich man. The confidential relation which the canons have made strong is now to be conveyed to the poor man who cannot afford to pay for it, and who has never received it. The intent of the canons is to protect the client against undue influence or fraudulent actions which subvert his legal rights. The Legal Services Project carries out that intent.[51] "Socialization" of legal services for the poor is not the aim of the Legal Services Project, since it seeks to preserve the attorney-client relation. In the words of its director, providing "social justice is not socialism."[52] No fiat of the government will dictate the affairs between the attorney, his client, or a third party. Rather, both initiation and operation will come from the local community, and it is to be expected that the impetus will be from the local bar associations, law schools, established legal aid societies, and individual lawyers. These groups will have strong feelings as to the independence of the Bar, the preservation of the attorney-client relation, and the adherence of the program to the Canons of Ethics. The interests of the organized Bar, then, will be effectively represented.[53] Remember that the judges who decided the

[49] Katzenbach, 10 A. B. A. News, *supra* note 48.

[50] *Ibid.*

[51] Westwood, *supra* note 45.

[52] Shriver, Address to the Annual Meeting of the American Bar Association (August 11, 1965), at 6. Mr. E. Clinton Bamberger, Jr., Director of the Legal Services Program, describes the Office of Economic Opportunity as primarily "interested in supporting programs which provide legal services to persons too poor to afford to pay a fee to an attorney." See letter to the writer of the article (November 26, 1965).

[53] Cleveland Bar Association Journal, Delegate's Report: Poverty and the Law (October 6, 1965) 285, 305.

N.A.A.C.P. and *Brotherhood* cases, many of the Congressmen who voted for the Economic Opportunity Act, the Attorney General of the United States, three-fifths of the holders of important positions in the Office of Economic Opportunity,[54] and every attorney who is now operating under a Legal Services funded project, are lawyers who took as their oath support of the Canons of Ethics when first beginning practice, and then were reared in the legal profession with those canons as their byword. Such men must feel that the Project is in harmony with the canons, or they could not, in good conscience, continue favoring it. In any case, the presence of this many attorneys will insure the project remaining within the bounds of the Canons of Ethics. The American Bar Association did, in fact, pledge itself in February, 1965, to cooperate with the Office of Economic Opportunity and other groups to develop and implement programs for expansion of legal services to indigents and persons of low income, according to ethical standards of the profession.[55]

As is seen by the development of the Legal Services Project, government has ceased its passive role in the lives of our citizens, and affirmative obligations have been undertaken. The problem of the individual who needs legal services but cannot afford to pay for them is growing rapidly. It had been suggested previous to the upswing in activities (although after its creation) of the Economic Opportunity project, to enlist the aid of the social worker in seeking out possible clients who needed legal services, and also to have the social worker present at the conferences with the client, despite problems of confidentiality. The ultimate possibility of federal financing was raised without undue fear.[56] The administration of justice still results in unequal treatment for the rich and the poor. Remedial service only is likely to be provided to the poorer citizen, since the lawyer is called in only after the fact has occurred. No way exists for the poor to plan preventively. Legal Aid itself cannot and does not fill the needs of all those who wish it.[57] Thus, an additional arm is needed to alleviate the legal problems of the poor. The "neighborhood law

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[54] Shriver, *supra* note 52.

[55] Cleveland Bar Association Journal, *supra* note 53, at 285.

[56] Sparer, The Role of the Welfare Client's Lawyer, 12 U. C. L. A. L. Rev. 361 (1965).

[57] Carlin and Howard, Legal Representation and Class Justice, 12 U. C. L. A. L. Rev. 381 (1965).

office" is designed to bring needed legal services to those who cannot afford to pay for them. In addition, since the office is located in the community which it serves, it has the potential for reaching a great number of clients, as can be readily seen from statistics presented for six months of operation in just one city.[58] The new service, then, is sorely needed by our society. "Group" legal services was one attempted solution. Because certain parts of the group program appeared to violate the Canons of Ethics, group practice had had an unethical, or at most a quasi-ethical, status. The Supreme Court, in the *Brotherhood* decision, gave legitimate status to group practice.[59] As a result, the availability of legal services to persons of less financially fortunate conditions has been examined by the Bar.[60] If group legal services have had the Court's approval, there should be no reason why neighborhood legal services as proposed by the Office of Economic Opportunity should not have the same approval. The organized Bar should strive to find ways of improving the legal services plan, and be in the forefront of efforts to make counsel available to all those who need it, regardless of position or income, since this is primarily the burden of the legal profession.[61]

Conclusion

This paper has attempted to reconcile the neighborhood legal services plan with the existing Canons of Professional Ethics. The prime argument is that the plan provides benefits to society, and that the Canons were designed to prevent evils far different from the questions presented by the project. The Director of the Opportunity Office has stated that the Legal Services project is "not trying to subvert the canons of ethics, dealing with solicitation, barratry, or use of lay intermediaries." [62] It is to be recognized, however, that a social worker going out and advising a particular individual of his particular legal rights and of the

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[58] Dugas and Johnson, *supra* note 33, at 21. In the first month of operation, with only one office, 25 clients were processed. In the sixth month, six offices had been opened and had processed 475 new clients that month, in addition to those clients who were still receiving assistance.

[59] Carlin and Howard, *supra* note 57.

[60] Cheatham, Availability of Legal Services: the Responsibility of the Individual Lawyer and of the Organized Bar, 12 U. C. L. A. L. Rev. 438 (1965).

[61] Christensen, Lawyer Referral Service: An Alternative to Lay-Group Legal Service?, 12 U. C. L. A. L. Rev. 341 (1965).

[62] Shriver, *supra* note 52.

merits of seeing the "neighborhood lawyer at the OEO center," and presenting brochures advising what actions may be taken on a host of separate subjects, does present extremely close questions of solicitation of clients with the presence of lay intermediaries engaged in the unauthorized practice of law.[63] The Canons, although in fact designed to prevent other problems, may also prevent this type of action. The Canons are not merely bent, then, but broken. One cannot sidestep the issue by claiming an overriding beneficial interest to society, if the activity involved violates fundamental rules of practice. The Bar has enjoined activities very similar to those now practiced by the federal government where those actions were effected by a private association.[64] Since the Court's decisions in *N.A.A.C.P.* and *Brotherhood* "it is not hazardous to predict, however, that Canons 35 and 47 will no longer bar the development of wise and effective methods for making legal services available to those in need of them." [65] And this is the fundamental issue: whether the canons are merely bent, or, in reality, broken. In either event, the canons should not prevent justice for those too poor to pay for a lawyer. The "redeeming social interest" spoken of by the Court in obscenity cases and the "overriding social importance" talked about in social legislation are phrases which are very apt in this context. If bent, the Canons should stand with that permanent crook so as to aid the indigent. If broken, the canons should be revised to fit current needs and modern situations, not to shut out the poor in their quest for the justice which is promised to every individual under the system of law in our nation. As Attorney General Katzenbach pointed out,

> To be reduced to inaction by ethical prohibitions against profiteering when the client might well be penniless is, on its face, anomalous. To be reduced to inaction by ethical prohibitions against promoting litigation when unfair treatment abounds is to let the canons of lawyers serve injustice.[66]

As this note goes to press we observe with interest a decision of the New Jersey Supreme Court that all lawyers assigned to defend the poor shall be paid by the county in most cases, or by a public defender's office, or by some combination of both. [67]

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[63] Canons 27, 35, and 47, respectively, *supra* notes 3, 5, and 6 for text.

[64] Drinker, *supra* note 37.

[65] Cheatham, *supra* note 60, at 455.

[66] Katzenbach, *supra* note 49.

[67] Haines case, reported in N. Y. Times, p. 1 (Mar. 8, 1966).